

Administration of Joseph R. Biden, Jr., 2021

Memorandum on Temporary Certification Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy
October 22, 2021

Memorandum for the Heads of Executive Departments and Agencies

Subject: Temporary Certification Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy

Section 1. Policy. In the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note) (the "Act"), the Congress declared that "all Government records concerning the assassination of President John F. Kennedy . . . should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination." The Congress also found that "most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records." Almost 30 years since the Act, the profound national tragedy of President Kennedy's assassination continues to resonate in American history and in the memories of so many Americans who were alive on that terrible day; meanwhile, the need to protect records concerning the assassination has only grown weaker with the passage of time. It is therefore critical to ensure that the United States Government maximizes transparency, disclosing all information in records concerning the assassination, except when the strongest possible reasons counsel otherwise.

Sec. 2. Background. The Act permits the continued postponement of disclosure of information in records concerning President Kennedy's assassination only when postponement remains necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. Since 2018, executive departments and agencies (agencies) have been reviewing under this statutory standard each redaction they have proposed that would result in the continued postponement of full public disclosure. This year, the National Archives and Records Administration (NARA) has been reviewing whether it agrees that each redaction continues to meet the statutory standard. The Archivist of the United States (Archivist), however, has reported that "unfortunately, the pandemic has had a significant impact on the agencies" and NARA and that NARA "require[s] additional time to engage with the agencies and to conduct research within the larger collection to maximize the amount of information released." The Archivist has also noted that "making these decisions is a matter that requires a professional, scholarly, and orderly process; not decisions or releases made in haste." The Archivist therefore recommends that the President "temporarily certify the continued withholding of all of the information certified in 2018" and "direct two public releases of the information that has" ultimately "been determined to be appropriate for release to the public," with one interim release later this year and one more comprehensive release in late 2022.

Sec. 3. Temporary Certification. In light of the agencies' proposals for continued postponement under the statutory standard, the Archivist's request for an extension of time to engage with the agencies, and the need for an appropriate review and disclosure process, I agree with the Archivist's recommendation. Temporary continued postponement is necessary to protect against identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in immediate disclosure. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5(g)(2)(D) of the Act, I hereby

certify that all information within records that agencies have proposed for continued postponement under section 5(g)(2)(D) shall be withheld from full public disclosure until December 15, 2022.

Sec. 4. Interim Release. Any information currently withheld from public disclosure that agencies have not proposed for continued postponement shall be reviewed by NARA before December 15, 2021, and shall be publicly released on that date. Out of respect for the anniversary of President Kennedy's assassination, such release shall not occur before December 15, 2021.

Sec. 5. Intensive 1-Year Review. (a) Over the next year, agencies proposing continued postponement and NARA shall conduct an intensive review of each remaining redaction to ensure that the United States Government maximizes transparency, disclosing all information in records concerning the assassination, except when the strongest possible reasons counsel otherwise. This review shall include documents within the assassination records collection designated as "not believed relevant" by the Assassination Records Review Board established under the Act, but nonetheless placed within the collection by the Assassination Records Review Board.

(b) Any information that an agency proposes for continued postponement beyond December 15, 2022, shall be limited to the absolute minimum under the statutory standard. An agency shall not propose to continue redacting information unless the redaction is necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. In applying this statutory standard, an agency shall:

- (i) Accord substantial weight to the public interest in transparency and full disclosure of any record that falls within the scope of the Act; and
- (ii) Give due consideration that some degree of harm is not grounds for continued postponement unless the degree of harm is of such gravity that it outweighs the public interest.

(c) For any record containing information that an agency proposes for continued postponement beyond December 15, 2022, the agency shall provide, no later than December 15, 2021:

- (i) an unclassified letter, to be signed by the head of the agency, providing a written description of the types of information for which the agency is proposing continued postponement and reasons for which the agency is proposing continued postponement of such information;
- (ii) an unclassified index identifying for each such record the reasons for which the agency is proposing continued postponement of information in such record; and
- (iii) a specific proposed date identifying for each such record when the agency reasonably anticipates that continued postponement of information in such record no longer would be necessary or, if that is not possible, a specific proposed date for each such record identifying when the agency would propose to next review again after December 15, 2022, whether the information proposed for continued postponement in such record still satisfies the statutory standard for postponement.

(d) NARA shall review each proposed redaction, no later than September 1, 2022, in consultation with:

- (i) The Department of Defense if the agency proposing the redaction asserts an anticipated harm to the military defense;

(ii) The Office of the Director of National Intelligence if the agency proposing the redaction asserts an anticipated harm to intelligence operations;

(iii) The Department of Justice if the agency proposing the redaction asserts an anticipated harm to law enforcement; and

(iv) The Department of State if the agency proposing the redaction asserts an anticipated harm to the conduct of foreign relations.

(e) The relevant consulting agency, as designated pursuant to subsection (d) of this section, shall provide its assessment to NARA as to whether the information proposed for continued postponement satisfies the statutory standard for such postponement. In reviewing a proposed redaction, NARA or the relevant consulting agency, as designated pursuant to subsection (d) of this section, should consult with the agency that proposed the redaction.

(f) If NARA does not agree that a proposed redaction meets the statutory standard for continued postponement, it shall inform the agency that proposed the redaction. After consultation with NARA, the agency that proposed the redaction may, no later than October 1, 2022:

(i) withdraw the proposed redaction; or

(ii) refer the decision on continued postponement to the President through the Counsel to the President, accompanied by an explanation of why continued postponement remains necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure.

(g) If NARA agrees that a proposed redaction meets the asserted statutory standard for continued postponement, the Archivist shall recommend to the President, no later than October 1, 2022, that continued postponement from public disclosure of the information is warranted after December 15, 2022.

(h) At the conclusion of the 1-year review, any information still withheld from public disclosure that agencies do not propose for continued postponement beyond December 15, 2022, shall be released to the public on that date.

(i) At the conclusion of the 1-year review, each unclassified letter described in subsection (c)(i) of this section and each unclassified index described in subsection (c)(ii) of this section shall be disclosed to the public on December 15, 2022, with any updates made to account for any information initially proposed for continued postponement that is not postponed from public disclosure beyond December 15, 2022.

Sec. 6. Digitization and Democratization of Records. (a) Since the 1990s, more than 250,000 records concerning President Kennedy's assassination—more than 90 percent of NARA's collection—have been released in full to the public. Only a small fraction of the records contains any remaining redactions. But many records that have been fully disclosed are inaccessible to most members of the public unless they travel to NARA's location in College Park, Maryland.

(b) The Archivist shall issue a plan, no later than December 15, 2021, to digitize and make available online NARA's entire collection of records concerning President Kennedy's assassination.

(c) The Archivist shall provide additional context online about the records that have been withheld in full under sections 10 and 11 of the Act—primarily documents containing tax-related information of the Internal Revenue Service or the Social Security Administration—that are not subject to the Presidential certification requirement under section 5 of the Act.

Sec. 7. Publication. The Archivist is hereby authorized and directed to publish this memorandum in the *Federal Register*.

JOSEPH R. BIDEN, JR.

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NOTE: This memorandum was published in the *Federal Register* on October 27.

Categories: Communications to Federal Agencies : President John F. Kennedy assassination records, temporary certification regarding disclosure of information, memorandum.

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